

BEFORE THE  
TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

2005 JUN 24 PM 2:06

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IN THE MATTER OF )  
APPLICATION OF )  
VCUSTOMER CORPORATION )  
FOR A CERTIFICATE )  
TO PROVIDE )  
COMPETING LOCAL )  
TELECOMMUNICATIONS SERVICES )

05-00171

**APPLICATION FOR CERTIFICATE TO PROVIDE  
COMPETING LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to applicable Tennessee Statutes and the Rules and Regulations of the Tennessee Regulatory Authority and Section 253 of the federal Telecommunications Act of 1996 ("Act"), vCustomer Corporation ("vCustomer") respectfully requests that the Tennessee Regulatory Authority ("TRA") grant vCustomer authority to provide competing local telecommunications services, including telecommunications relay services, within the State of Tennessee. vCustomer is willing and able to comply with all applicable rules and regulations in Tennessee pertaining to the provision of competing local telecommunications services. TCA 65-4-201.

On April 15, 2005, vCustomer and MCI, Inc. ("MCI") entered into an Asset Purchase Agreement whereby MCI agreed to sell, and vCustomer agreed to purchase, certain assets of MCI related to the telerelay service business of MCI's subsidiary MCI WorldCom Communications, Inc., and other assets. In Tennessee, the telerelay service assets include the contract between the State of Tennessee, Tennessee Regulatory Authority and MCI WorldCom Communications, Inc. (the "TRS Contract") and the Telerelay Call Center located at 1725 N.

Shelby Oaks Drive, Memphis, Tennessee. vCustomer has reviewed and is familiar with the terms and conditions of the TRS Contract and hereby affirms its understanding thereof and its commitment to be bound thereby, including the performance of all duties and obligations of the Contractor under the TRS Contract.

In support of this Application, vCustomer submits the following:

1. The full name and address of the Applicant is:

vCustomer Corporation  
520 Kirkland Way  
Suite 101  
Kirkland, WA 98033  
Telephone: (206) 802-0200

Questions regarding this application should be directed to:

Jose S. David, CFO  
520 Kirkland Way  
Suite 101  
Kirkland, WA 98033  
Telephone: (206) 802-0200  
Fax: (206) 802-0201

Contact name and address at the Company is:

Jose S. David, CFO  
520 Kirkland Way  
Suite 101  
Kirkland, WA 98033  
Telephone: (206) 802-0200  
Fax: (206) 802-0201

2. Organizational Chart of Corporate Structure

See **Exhibit A.**

3. Corporate Information

vCustomer Corporation was incorporated in the state of Washington in 1999. A copy of vCustomer's amended Articles of Incorporation are provided in **Exhibit B.** A copy of

vCustomer's Authority to transact business in the State of Tennessee is provided in **Exhibit C**. The names and addresses of vCustomer's corporate officers are provided in **Exhibit D**. No officers are located in Tennessee. Brief biographies of vCustomer's Board of Directors and Officers are provided in **Exhibit E**.

4. vCustomer possesses the managerial, technical, and financial ability to provide local telecommunications service (relay service) in the State of Tennessee as demonstrated below.

A. Financial Qualifications.

In support of its financial qualification, vCustomer, a closely held corporation, submits the year ended March 31, 2004 audited financial statements in **Exhibit F** (provided under seal).

Our pro forma, as if, consolidated revenues and EBITDA for the year ended March 31, 2005 were approximately \$172.4 million and \$33.1 million, respectively, as compared with revenues of \$169.9 million and EBITDA of \$21.3 million for the year ended March 31, 2004.

The Company has received a number of financing vehicles to ensure adequate liquidity in meeting its anticipated funding needs. The Company has received commitment letters totaling \$52.5 million, including from a major lending institution (\$35 million), an established private equity firm (\$5 million), and the selling party (\$12.5 million).

A copy of the Corporate Surety Bond is provided in **Exhibit G**.

B. Managerial Ability.

As shown in Exhibit E to this Application, vCustomer has the managerial expertise to successfully operate relay services in Tennessee. As described in the attached biographical information, vCustomer's management team has extensive management and business experience.

vCustomer provides relay services, directory assistance and operator services, customer relationship management and business process outsourcing (“BPO”) services from our facilities in the United States, India and the Philippines, to United States governmental agencies and Fortune 1000 companies looking to outsource these functions to a high quality, competitively priced provider. We have approximately 6,000 employees in nine call centers worldwide. We currently service 19 U.S.-based clients in a variety of industries, including telecommunications, technical help desk, retail and hospitality. We provide operator relay services to the deaf community whereby our operators serve as a deaf person’s voice to the outside world via the internet. Additionally, we provide inbound customer management services, which include handling calls and e-mails from our clients’ customers to obtain directory assistance, general operator assistance, technical support, order goods and services, address billing questions, solicit warranty coverage and web site help desk. We manage more than four million customer communications per month, including inbound calls, e-mails and web chats. Our largest clients are federal and state agencies, MCI, Cisco/Linksys, Netgear, FingerHut and Target. We believe our competitive strengths will allow us to successfully create a sustainable position as a leading global outsourced services provider.

We have invested considerably in a high availability, highly redundant, dual platform Cisco and Avaya end-to-end Voice Over IP infrastructure across all of our locations. This platform enables us to provide consistently high quality services at costs generally lower than our offshore competitors and substantially lower than our domestic competitors, and ensures that we have the ability to customize a solution for each client to create better integration with its existing back office environment.

*Strong Industry Expertise.* vCustomer has particular expertise in industries that have a high demand for complex telecommunication support services and technical support services for personal computers, printers, peripherals and networking equipment. The directory assistance platform, based in Cedar Rapids, Iowa, is a comprehensive, enterprise level solution that is built to scale to many multiples of its current capabilities. This expertise has enabled us to provide customized, high quality services quickly and efficiently, and, we believe, enhances our ability to attract major clients on a global basis.

*Collaborative Client Relationships.* vCustomer works closely with its clients to improve customer satisfaction by creating solutions for managing customer interaction needs. We work with our clients to jointly train our professionals, and integrate our clients' processes and technologies with ours. We believe our collaborative approach will foster long-term relationships with our clients.

C. Technical Qualifications.

As noted above, vCustomer will acquire 100% of MCI's assets used in rendering the State of Tennessee TRS Contract. Additionally, vCustomer will make employment offers to 100% of the personnel that currently render services to the deaf and hard of hearing. No change of service is anticipated. The dial in numbers will remain the same. MCI is and will remain the telecommunications service provider following consummation of the asset acquisition, and therefore is qualified to provide services in Tennessee under the TRS Contract.

vCustomer has reviewed and is familiar with the terms and conditions of the TRS Contract, and hereby affirms its understanding thereof and its commitment to be bound thereby, including the performance of all duties and obligations of the contractor thereunder.

5. Proposed Service Area

vCustomer proposes to offer its services throughout the State of Tennessee. In addition to the TRS Contract, vCustomer is in the process of assuming from MCI similar contracts between MCI and the states of Arizona and California.

6. Types of Services to Be Provided

vCustomer will provide, for the communicatively disabled, access to the intrastate telecommunications network which is functionally equivalent to that enjoyed by individuals who are not disabled. We will provide telecommunications access to and from the communicatively disabled without the need for the non-disabled to utilize anything other than a telephone. Access will be provided with 711 dialing in addition to one or more toll-free numbers. These toll-free numbers shall be universally available and uniform throughout Tennessee. vCustomer shall accept calls that originate from or terminate at TDDs, TTYs, PCs, or any other automated equipment used to facilitate telecommunications service for the communicatively disabled. Such calls shall both originate and terminate with the state. We are capable of accepting calls placed across a state line which, if the relay center were not utilized, would be considered local intrastate calls. Individuals with communication disabilities subscribing to Tennessee intrastate service will be able to call, or be called by, any business or residence that has standard telephone service in Tennessee.

In addition to telecommunications relay services to be provided pursuant to the TRS Contract, vCustomer will provide directory assistance and operator services to Tennessee customers.

7. Repair and Maintenance

vCustomer understands the importance of effective customer service for local service customers. vCustomer has made arrangements for its customers to call the company at its toll-free customer service number, 1-866-503-0262. In addition, customers may contact the company in writing at its headquarters address or via email at [www.vcustomer.com](http://www.vcustomer.com). The toll free number will be printed on the customer's monthly billing statements.

Grant of this application will further the goals of the Tennessee Legislature and further the public interest by expanding the availability of competitive telecommunications services in the State of Tennessee. In addition, intrastate offerings of these services is in the public interest because the services will provide Tennessee customers increased efficiencies and cost savings. Authorizing vCustomer to provide local exchange telecommunications services will enhance materially the telecommunications infrastructure in the State of Tennessee and will facilitate economic development.

In particular, the public will benefit both directly, through the use of the services to be offered by vCustomer (including services to be offered pursuant to the TRS Contract), and indirectly, because vCustomer's presence in Tennessee will increase the incentives for other telecommunications providers to operate more efficiently, offer more innovative services, reduce their prices, and improve their quality of service. Grant of this application will further enhance the service options available to Tennessee citizens for the reasons set forth above.

8. Small and Minority-Owned Telecommunications Business Participation Plan

See **Exhibit H**.

9. Toll Dialing Parity Plan

Not applicable.

10. Service on Incumbents

vCustomer has served notice of this application to the eighteen (18) incumbent local exchange telephone companies in Tennessee (shown on the attached certificate of service) with a statement regarding the company's intention of operating within the State.

11. Numbering Issues

Not applicable.

12. Tennessee Specific Operational Issues

Not applicable.

13. Miscellaneous

A. Sworn pre-filed testimony.

Attached as **Exhibit I.**

B. Deposits.

vCustomer does not require customer deposits.

C. Complaints

vCustomer has not been the subject of a complaint in any state in which it does business.

D. A copy of vCustomer's tariff is enclosed as **Exhibit J.**

E. Communication Plan to the Deaf and Hard of Hearing

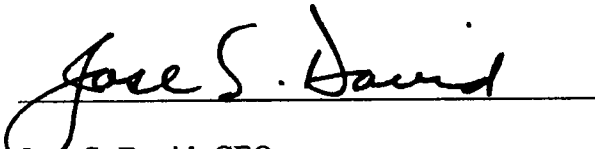
Upon assignment of the TRS contract to vCustomer, vCustomer will submit a communication plan for the benefit of subscribers. vCustomer recognizes the importance of a seamless and transparent transition for the regulatory bodies as well as the deaf and hard of hearing community.



## **Conclusion**

vCustomer respectfully requests that the TRA enter an order granting vCustomer a certificate of convenience and necessity to operate as a competing telecommunications service provider (specifically, to provide telerelay services throughout the State of Tennessee pursuant to the TRS Contract). For the reasons stated above, vCustomer's provision of these services would promote the public interest by providing high-quality service for the benefit of the deaf and hearing impaired.

Respectfully submitted this 21 day of June, 2005.

A handwritten signature in black ink, reading "Jesse S. David", is written over a horizontal line.

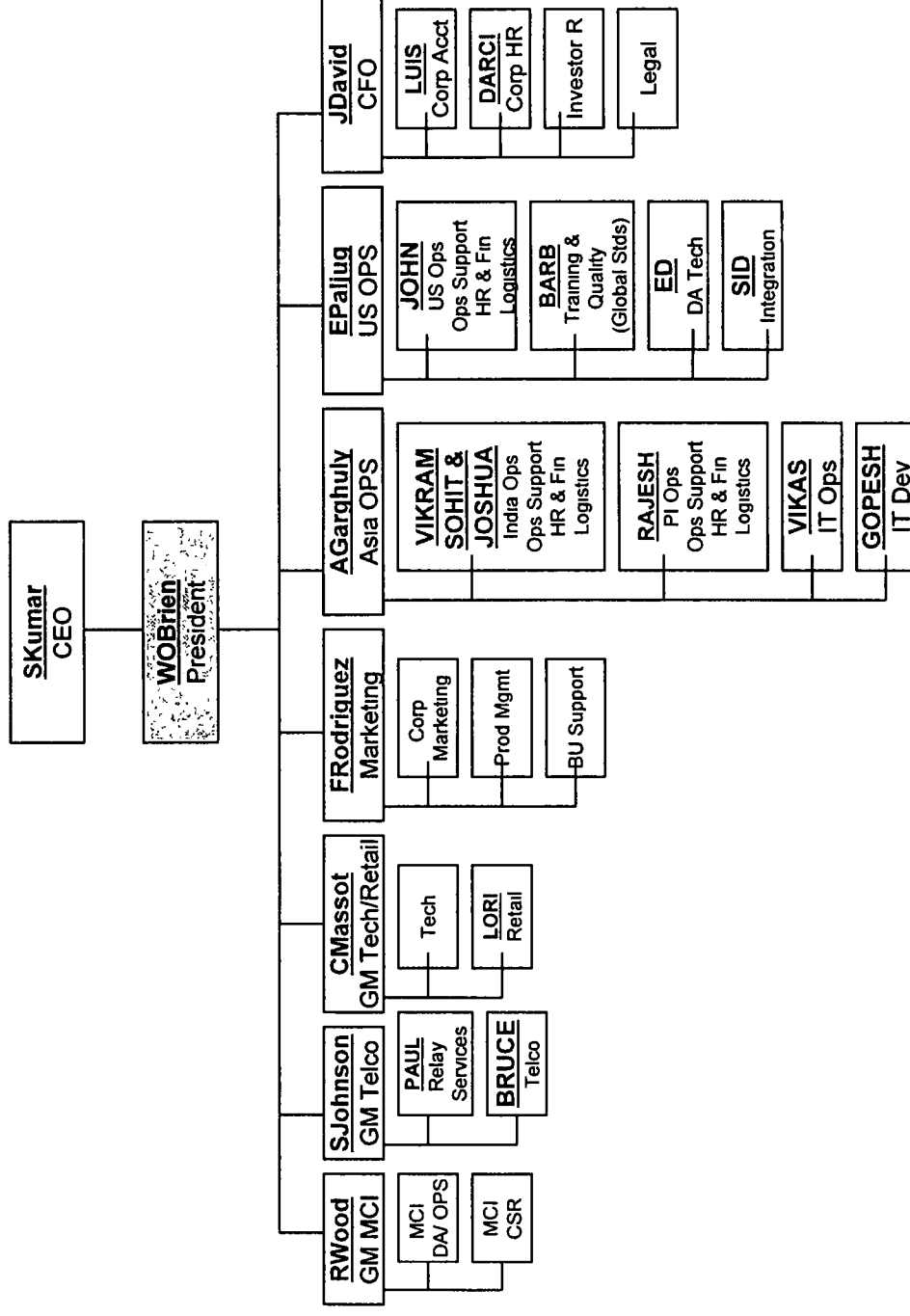
Jesse S. David, CFO  
vCustomer Corporation

## **LIST OF EXHIBITS**

- EXHIBIT A: vCustomer Org Chart
- EXHIBIT B: Third Amended and Restated Articles of Incorporation of vCustomer Corporation
- EXHIBIT C: Certificate of Authorization
- EXHIBIT D: Officers of vCustomer Corporation
- EXHIBIT E: Board of Directors and Officers Biographies
- EXHIBIT F: vCustomer Corporation Consolidated Financial Statements  
**[FILED UNDER SEAL]**
- EXHIBIT G: Letter of Bondability
- EXHIBIT H: Small and Minority-Owned Telecommunications Business Participation Plan
- EXHIBIT I: Pre-Filed Testimony of Jose S. David
- EXHIBIT J: Tariff

## **Exhibit A**

# vCustomer Org Chart



## **Exhibit B**

JAN 30 2003

STATE OF WASHINGTON

**THIRD AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
VCUSTOMER CORPORATION**

Pursuant to the Revised Code of Washington 23B.10.070, the following constitutes the Third Amended and Restated Articles of Incorporation (the "Restated Articles") of vCustomer Corporation, a Washington corporation:

**ARTICLE I. NAME**

The name of this corporation is vCUSTOMER CORPORATION.

**ARTICLE II. EXISTENCE**

This corporation shall have perpetual existence.

**ARTICLE III. PURPOSE**

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the Act.

**ARTICLE IV. SHARES**

**4.1 Authorized Capital.** The corporation shall have authority to issue Thirty Nine Million Three Hundred Seventy Eight Thousand Five Hundred Ninety (39,378,590) shares of stock in the aggregate. Such shares shall be divided into two classes as follows:

- (a) Thirty Million (30,000,000) shares of common stock without par value (the "Common Stock").
- (b) Nine Million Three Hundred Seventy Eight Thousand Five Hundred Ninety (9,378,590) shares of preferred stock without par value (the "Preferred Stock"). One Million Two Hundred Thousand (1,200,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred"). Five Million One Hundred Ninety Thousand Five Hundred Forty Five (5,190,545) of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "Series B Preferred"). Two Million Nine Hundred Eighty Eight Thousand Forty Five (2,988,045) of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock" (the "Series C Preferred," collectively with the Series B Preferred and the Series A Preferred, the "Series Preferred"). The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows in this Article IV:

## **4.2 Series A, B and C Preferred Stock**

**A. Certain Definitions.** For the purposes of this Section 4, the following terms have the respective meanings set forth below:

a. "Sale Event" shall mean (1) any sale or other transfer of the corporation's assets outside the ordinary course of business, (2) any merger of the corporation with or into any other person or entity (except for a merger effected solely for a change of domicile or into or with a wholly-owned subsidiary), (3) the acquisition by any person or entity of more than 40% of the voting power of the corporation or (4) the initial public offering of the corporation's equity securities registered under the Securities Act of 1933, as amended (the "Securities Act"). Notwithstanding the foregoing, a Sale Event shall not include any sales, transfers, mergers, or acquisitions that constitute a Deemed Liquidation (as defined in Section 4.2(D)(3) hereunder).

b. "Junior Stock" shall mean (1) with respect to the Series C Preferred, (i) for purposes of Section 4.2(B), the Series A Preferred and Common Stock and any other stock ranking with respect to dividends junior to the Series C Preferred, and (ii) for purposes of Section 4.2(D), the Series B Preferred, Series A Preferred, Common Stock and any other stock ranking with respect to liquidation junior to the Series C Preferred, (2) with respect to the Series B Preferred, the Series A Preferred, Common Stock and any other stock ranking with respect to dividends or on liquidation junior to the Series B Preferred, and (3) with respect to the Series A Preferred, the Common Stock and any other stock ranking with respect to dividends or on liquidation junior to the Series A Preferred.

c. The "Original Issue Price" shall mean One Dollar (\$1.00) per share in the case of the Series A Preferred, Two Dollars Thirteen Point Three Seven One Three Cents (\$2.133713) per share in the case of the Series B Preferred, and Two Dollars Thirty Four Point Two Six Six Nine Cents (\$2.342669) per share in the case of the Series C Preferred, in each case subject to appropriate adjustment in the event of any stock dividend, stock split, stock distribution or combination, reclassification, recapitalization or similar event.

d. The "Original Issue Date" shall mean, for the Series A Preferred, the date on which the first share of Series A Preferred was issued, for the Series B Preferred, the date on which the first share of the Series B Preferred was issued, and for the Series C Preferred, the date on which the first share of Series C Preferred was issued.

## **B. Dividend Rights**

### **1. Series C and B Preferred.**

a. Dividends shall accrue, beginning on the applicable Original Issue Date, on each share of Series B Preferred and Series C Preferred at a rate equal to 8% of the applicable Original Issue Price per annum, compounded annually on each anniversary of the

applicable Original Issue Date and payable before any dividends shall be declared, set apart for or paid upon Junior Stock in any year. No dividend shall be declared or paid with respect to the Series B Preferred or Series C Preferred unless at the same time a like proportionate dividend for the same dividend period is declared and paid with respect to Series B Preferred and Series C Preferred. In addition to the foregoing, the holders of Series B Preferred and Series C Preferred shall be entitled to participate on an as converted basis in any dividends that may be declared on the Common Stock.

b. Upon the consummation of a Sale Event, dividends on the Series B Preferred and Series C Preferred shall cease to accrue. All accrued but unpaid dividends shall thereupon be converted into that number of shares of Common Stock equal to the aggregate amount of the accrued and unpaid dividends divided by the Series B Conversion Price or Series C Conversion Price (as defined herein), as applicable, then in effect, *except* that any such dividends shall be waived in the event of an initial public offering of the Common Stock of the corporation under the Securities Act at a minimum pre-offering valuation of at least \$7.00 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares).

c. Dividends on the Series B Preferred and Series C Preferred shall be cumulative, whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year, so that if in any fiscal year or years, dividends in whole or in part are not paid upon the Series B Preferred or Series C Preferred, unpaid dividends shall accumulate as against the holders of the Junior Stock.

d. For so long as any Series B Preferred or Series C Preferred remains outstanding, except as provided in the last sentence of Section 4.2(B)(1)(e) below, the corporation shall not, without the prior vote or consent of the holders of at least 75% of the outstanding shares of Series B Preferred and Series C Preferred voting together as a single class, pay any dividend upon the Junior Stock, whether in cash or other property (other than shares of Junior Stock), or purchase, redeem or otherwise acquire any such Junior Stock unless, in addition to the payment of the dividends to the holders of the Series B Preferred and Series C Preferred as described above the corporation has redeemed all shares of Series B Preferred and Series C Preferred which it would theretofore have been required to redeem under Section 4.2(M) hereof. Notwithstanding the provisions of this Section 4.2(B)(1)(d), without declaring or paying dividends on the Series B Preferred or Series C Preferred, the corporation may, subject to applicable law, repurchase or redeem shares of capital stock of the corporation from current or former officers or employees of the corporation pursuant to the terms of repurchase or similar agreements in effect from time to time, provided that such agreements have been approved by the Board of Directors and the terms of such agreements provide for a repurchase or redemption price not in excess of the price per share paid by such employee for such share.

e. If the Company has unrestricted cash of at least Fifteen Million Dollars (\$15,000,000) at the end of a fiscal quarter, upon approval by the Board of Directors the Company shall pay the dividends accrued for such completed fiscal quarter pursuant to



Section 4.2(B)(1)(a) if the ratio of (x) the total amount of cash dividends to be paid with respect to such completed fiscal quarter pursuant to this sentence and the following sentence to (y) the net income of the corporation for such completed fiscal quarter, is less than twenty percent (20%).

## **2. Series A Preferred.**

a. Holders of Series A Preferred, in preference to the holders of any Junior Stock of the corporation, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Original issue Price of the Series A Preferred per annum on each outstanding share of Series A Preferred. Such dividends shall be payable only when, as and if declared by the Board of Directors. Dividends payable with respect to the Series A Preferred shall be non-cumulative.

b. So long as any shares of Series A Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the corporation be purchased, redeemed, or otherwise acquired for value by the corporation (except for acquisitions of Common Stock by the corporation pursuant to agreements which permit the corporation to repurchase such shares upon termination of services to the corporation or in exercise of the corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 4.2(B)(2)(a) above) on the Series A Preferred shall have been paid or declared and set apart. Notwithstanding the foregoing provisions, no dividend or distribution whatsoever shall be declared or paid at any time on the Common Stock unless a dividend shall be simultaneously paid on each outstanding share of Series A Preferred which, when added to all dividends (if any) accrued and paid through such date on such Series A Preferred for the calendar year in which the dividend or distribution is proposed to be paid is equal to or greater than the dividend or distribution proposed to be declared or paid on each share of Common Stock. The provisions of this Section 4.2(B)(2)(b) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock, or (iii) any repurchase of any outstanding securities of the corporation that is unanimously approved by the corporation's Board of Directors.

## **C. Voting Rights.**

1. **General Rights.** Each holder of Series Preferred shall have the right to one vote for each share of Common Stock into which the shares of Series Preferred held by such holder could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share). Except as otherwise provided by law, holders of Series Preferred shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, shall vote together with the Common Stock as a single class (except as expressly provided herein or as required by law), and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of this corporation, and, except as otherwise provided by law, shall be entitled to

vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote.

2. **Series B and C Preferred Class Vote.** Subject to the rights of any series of Preferred Stock which may from time to time come into existence, for so long as at least a total of 1,000,000 shares of Series B Preferred and Series C Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series Preferred) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least seventy-five percent (75%) of the then outstanding Series B Preferred and Series C Preferred voting as a single class shall be necessary for effecting or validating the following actions:

a. Authorization or issuance of any equity securities (including warrants, options, or other rights), except for Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights (i) to employees, officers or directors of, or consultants or advisors to the corporation or any subsidiary pursuant to stock purchase or stock purchase plans or other arrangements that are approved by the Board of Directors, (ii) pursuant to any equipment leasing arrangement, or debt financing from a bank or similar financial institution approved by the Board of Directors, or (iii) pursuant to any strategic transaction involving the Company and other entities, including (A) joint ventures, manufacturing, marketing and distribution arrangements or (B) technology transfer and development arrangements, in each case approved by the Board of Directors;

b. Any agreement by the Company or its shareholders regarding an Acquisition (as defined in Section 4.2(D)(4)(a) or Asset Transfer (as defined in Section 4.2(D)(4)(b)) which involves obligations of, or payments to, the Company or its shareholders in excess of \$250,000;

c. Any agreement with any of the Company's directors, officers or shareholders or any person or entity, directly or indirectly, controlling, controlled by or under common control with such person or entity or family member of any of the foregoing which involves obligations of, or payments to, the Company in excess of \$100,000; or

d. Any merger, consolidation, recapitalization, reorganization, liquidation or dissolution of the corporation in which the net cash proceeds to holders of the Series B Preferred and Series C Preferred is less than three times their respective initial investments; or

e. A sale or liquidation of more than 50% of the corporation's assets.

3. **Series B and C Preferred Series Vote.** Subject to the rights of any series of Preferred Stock which may from time to time come into existence, the Corporation shall not amend its Restated Articles or Bylaws or take any other action without the approval of the

holders of a majority of the Series B Preferred and the holders of a majority of the Series C Preferred if such amendment would result in:

a. Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the corporation ranking on a parity with or senior to the Series B Preferred or Series C Preferred in rights of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series;

b. Any redemption, repurchase, payment of dividends or other distributions with respect to Junior Stock (except for acquisitions of Common Stock by the corporation pursuant to agreements which permit the corporation to repurchase such shares upon termination of services to the corporation or in exercise of the corporation's right of first refusal upon a proposed transfer); or

c. Any action that increases the number of authorized shares of Series B Preferred or Series C Preferred or that adversely alters or changes the rights, preferences, or privileges of the Series B Preferred or Series C Preferred.

#### **D. Liquidation Rights.**

1. Upon any liquidation, dissolution, or winding up of the corporation, whether voluntary or involuntary, and before any distribution or payment shall be made to the holders of any Junior Stock, subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of Series C Preferred shall be entitled to be paid in cash out of the assets of the corporation an amount per share of Series C Preferred equal to the Original Issue Price. If, upon any such liquidation, distribution, or winding up, the assets of the corporation shall be insufficient to make payment in full to all holders of Series C Preferred of the liquidation preference set forth in this Section 4.2(D)(1), subject to the rights of any series of Preferred Stock that may from time to time come into existence, then such assets shall be distributed among the holders of Series C Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

2. After the payment of the full liquidation preference of the Series C Preferred as set forth in Section 4.2(D)(1) above, and before any distribution or payment shall be made to the holders of any Junior Stock, subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of Series B Preferred shall be entitled to be paid in cash out of the assets of the corporation an amount per share of Series B Preferred equal to the Original Issue Price. If, upon any such liquidation, distribution, or winding up, the assets of the corporation shall be insufficient to make payment in full to all holders of the Series B Preferred of the liquidation preference set forth in this Section 4.2(D)(2), subject to the rights of any series of Preferred Stock that may from time to time come into existence, then such assets shall be distributed among the holders of Series B Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

3. After the payment of the full liquidation preferences of the Series C Preferred and the Series B Preferred as set forth in Sections 4.2(D)(1) and 4.2(D)(2) above, and before any distribution or payment shall be made to holders of any Junior Stock, subject to the rights of any series of Preferred Stock that may from time to time come into existence, (i) the holders of the Series C Preferred shall be entitled to be paid in cash on a pro rata basis out of the assets of the corporation an amount equal to all accrued and unpaid dividends on the Series C Preferred and (ii) the holders of the Series B Preferred shall be entitled to be paid in cash on a pro rata basis out of the assets of the corporation an amount equal to all accrued and unpaid dividends on the Series B Preferred. The payment of the liquidation preferences of the Series C Preferred and the Series B Preferred as set forth in this 4.2(D)(3) shall be made pro rata on a pari passu basis. If, upon any such liquidation, distribution or winding up, the assets of the corporation shall be insufficient to make payment in full to all holders of Series C Preferred and Series B Preferred of the accrued dividends set forth in this Section 4.2(D)(3), subject to the rights of any series of Preferred Stock that may from time to time come into existence, then such assets shall be distributed among the holders of Series C Preferred and Series B Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled under this Section 4.2(D)(3).

4. After the payment of the full liquidation preferences of the Series C Preferred and Series B Preferred as set forth in Sections 4.2(D)(1), 4.2(D)(2) and 4.2(D)(3) above, and before any distribution or payment shall be made to the holders of any Junior Stock, subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of Series A Preferred shall be entitled to be paid in cash on a pro rata basis out of the assets of the corporation an amount equal to the Original Issue Price plus all declared and unpaid dividends on the Series A Preferred. If, upon any such liquidation, distribution or winding up, the assets of the corporation shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 4.2(D)(4), subject to the rights of any series of Preferred Stock that may from time to time come into existence, then such assets shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

5. After the payment of the full liquidation preference of the Series Preferred as set forth in Sections 4.2(D)(1), 4.2(D)(2), 4.2(D)(3) and 4.2(D)(4) above, and any other distribution that may be required with respect to any series of Preferred Stock that may from time to time come into existence, the remaining assets of the corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock. The following events shall be considered a liquidation under this Section 4.2(D) (each, a "Deemed Liquidation"):

a. any consolidation or merger of the corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the corporation immediately prior to such consolidation, merger or reorganization, own less than 50% of the corporation's voting power immediately after such

consolidation, merger or reorganization, or any transaction or series of related transactions to which the corporation is a party in which in excess of fifty percent (50%) of the corporation's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the corporation (an "Acquisition"); or

b. a sale, lease or other disposition of all or substantially all of the assets of the corporation (an "Asset Transfer").

c. In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (2) below:

(a) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(b) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(c) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i) (a), (b) or (c) to reflect the approximate fair market value thereof, as determined by the Board of Directors.

#### **E. Conversion Rights.**

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "Conversion Rights"):

1. **Optional Conversion.** Subject to and in compliance with the provisions of this Section any shares of Series Preferred may, at the option of the holder, be converted at any time into fully paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion of a share of Series Preferred shall be the quotient obtained by dividing the applicable Original Issue Price

by the applicable Series Preferred Conversion Price (as defined below), subject to adjustment as provided in this Section 4.2(E) and in Section 4.2(F)(2) below.

2. **Conversion Price.** The initial conversion price for the Series A Preferred shall initially be the Original Issue Price of the Series A Preferred (the "Series A Preferred Conversion Price") the initial conversion price for the Series B Preferred shall initially be the Original Issue Price of the Series B Preferred (the "Series B Preferred Conversion Price") and the initial Conversion Price for the Series C Preferred shall initially be the Original Issue Price of the Series C Preferred (the "Series C Preferred Conversion Price"). Such initial Series Preferred Conversion Prices shall be adjusted from time to time in accordance with this Section 4.2(E). All references to the "Series Preferred Conversion Price" herein shall mean the Series A Preferred Conversion Price, the Series B Preferred Conversion Price, and/or the Series C Preferred Conversion Price, as applicable, as so adjusted.

3. **Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4.2(E) shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or any transfer agent for the Series Preferred, and shall give written notice to the corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any accrued and unpaid dividends on the shares of Series C Preferred or Series B Preferred being converted and any declared and unpaid dividends on the shares of Series A Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

4. **Adjustment for Stock Splits and Combinations.** If the corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series Preferred, the Series Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series Preferred, the Series Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4.2(E)(4) shall become effective at the close of business on the date the subdivision or combination becomes effective.

5. **Adjustment for Common Stock Dividends and Distributions.** If the corporation at any time or from time to time after the Original Issue Date makes, or fixes a

record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series Preferred Conversion Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price shall be adjusted pursuant to this Section 4.2(E)(5) to reflect the actual payment of such dividend or distribution.

6. **Adjustments for Other Dividends and Distributions.** If the corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the corporation other than shares of Common Stock, in each such event provision shall be made so that the holders of the Series Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the corporation which they would have received had their Series Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4.2 with respect to the rights of the holders of the Series Preferred or with respect to such other securities by their terms.

7. **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4.2), in any such event each holder of Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

8. **Reorganizations, Mergers, Consolidations or Sales of Assets.** If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the

Common Stock (other than a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4.2), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the corporation to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4.2 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4.2 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**F. Sale of Shares Below Series Preferred Conversion Price.**

1. **Adjustment to Conversion Price.** Except as set forth in Sections 4.2(F)(2) below, there will be no adjustment to the Series Preferred Conversion Price for any securities of the corporation sold at a price per share below the Series Preferred Conversion Price.

2. **Sales of Shares Below the Series B and Series C Preferred Conversion Prices.**

a. If at any time or from time to time after the Original Issue Date, the corporation issues or sells, or is deemed by the express provisions of this subsection (a) to have issued or sold, Additional Shares of Common Stock (as defined in subsection (2)(d) below), other than as a dividend or other distribution on any class of stock as provided in Section 4.2(E)(5) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4.2(E)(4) above, for an Effective Price (as defined in subsection (2)(d) below) less than the then effective Series B Preferred Conversion Price or Series C Conversion Price, then and in each such case the then existing Series B Preferred Conversion Price or Series C Conversion Price, as applicable, shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying such Series B Preferred Conversion Price or Series C Preferred Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (2)(b)) by the corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series B Preferred Conversion Price or Series C Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of



Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date.

b. For the purpose of making any adjustment required under this Section 4.2(F)(2), the consideration received by the corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the corporation in connection with such issue or sale but without deduction of any expenses payable by the corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (2)(c)) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

c. For the purpose of the adjustment required under this Section 4.2(F)(2), if the corporation issues or sells (i) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (ii) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series B Preferred Conversion Price or Series C Preferred Conversion Price, in each case the corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is

reduced; provided further that if the minimum amount of consideration payable to the corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series B Preferred Conversion Price or Series C Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series B Preferred Conversion Price or Series C Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series B Preferred Conversion Price or Series C Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the corporation upon such exercise, plus the consideration, if any, actually received by the corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series Preferred.

d. "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the corporation or deemed to be issued pursuant to this Section 4.2(F)(2), other than (A) shares of Common Stock issued upon conversion of the Series Preferred; (B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board; (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date, (D) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board and by the shareholders to the extent required under Section 4.2(C)(2), (E) shares of Common Stock issued pursuant to any equipment leasing arrangement, or debt financing from a bank or similar financial institution approved by the Board of Directors, and (F) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued for

consideration other than cash pursuant to any strategic transaction involving the Company and other entities, including (i) joint ventures, manufacturing, marketing and distribution arrangements or (ii) technology transfer and development arrangements, in each case approved by the Board of Directors. References to Common Stock in the subsections of this clause (d) above shall mean all shares of Common Stock issued by the corporation or deemed to be issued pursuant to this Section 4.2(F)(2). The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the corporation under this Section 4.2(F)(2), into the aggregate consideration received, or deemed to have been received by the corporation for such issue under this Section 4.2(F)(2), for such Additional Shares of Common Stock.

3. **Certificate of Adjustment.** In the case of an adjustment, as set forth in Sections 4.2(F)(2) above, in the Series B Preferred Conversion Price or Series C Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, the corporation, at its expense, shall compute such adjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the corporation's books. The certificate shall set forth such adjustment, showing in detail the facts upon which such adjustment is based, including a statement of (a) the consideration received or deemed to be received by the corporation for any additional shares of Common Stock issued or sold or deemed to have been issued or sold, (b) the Series B Preferred Conversion Price or Series C Preferred Conversion Price at the time in effect, (c) the number of additional shares of Common Stock and (d) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred.

#### **G. Automatic Conversion.**

1. Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the relevant Series Preferred Conversion Price then in effect, (a) at any time (i) in the case of the Series A Preferred and Series B Preferred upon the affirmative vote of the holders of seventy-five percent (75%) of the outstanding shares of the Series A Preferred and Series B Preferred voting together as a single class, and (ii) in the case of the Series C Preferred upon the affirmative vote of the holders of a majority of the outstanding shares of the Series C Preferred, or (b) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of Common Stock for the account of the corporation with net proceeds of at least \$20,000,000 and a minimum pre-offering valuation on the corporation of at least \$80,000,000, which is subsequently listed on a nationally recognized stock exchange, other than a registration relating solely to an employee benefit plan of the corporation (a "Qualified Public Offering"). Upon such automatic conversion, any accrued and unpaid dividends shall be paid in accordance with the provisions of Section 4.2(B).

2. Upon the occurrence of the event specified in Section 4.2(F)(1) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the corporation or its transfer agent; provided, however, that the corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the corporation or its transfer agent as provided below, or the holder notifies the corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the corporation to indemnify the corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the corporation or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4.2(B).

**H. Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

**I. Reservation of Stock Issuable Upon Conversion.** The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

**J. Impairment.** Without the consent of the holders of the then outstanding Series Preferred, the corporation shall not amend its Restated Articles or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably

necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against impairment.

**K. Notices.** Any notice required by the provisions of this Section 4.2 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the corporation.

**L. Payment of Taxes.** The corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

**M. Redemption.**

1. The corporation shall be obligated to redeem the Series C Preferred and the Series B Preferred as follows:

a. The holders of at least a majority of the then outstanding shares of Series C Preferred may elect (acting as a separate class, either by vote or by contractual approval) to require the corporation, to the extent it may lawfully do so, to redeem the Series C Preferred in three (3) equal annual installments (such election, a "Series C Redemption Election"). The holders of Series C Preferred may make a Series C Redemption Election by providing written notice to the corporation of such election during the sixty (60) day period ending on the fourth (4<sup>th</sup>) anniversary of the Series C Preferred Original Issue Date (such fourth anniversary being the "Election Date"). Subject to the provisions of Section 4.2(M)(1)(c) below, the three redemption installment payments shall be made as follows: the first installment payment shall be made within sixty (60) days following the Election Date, and the two remaining installments shall be made on the two succeeding anniversaries of the Election Date (each such installment payment, a "Series C Installment," and the respective installment date, a "Redemption Date"). The corporation shall effect such redemptions on the applicable Redemption Date by paying in cash in exchange for the shares of Series C Preferred to be redeemed a sum equal to the applicable Original Issue Price per share of Series C Preferred plus accrued and unpaid dividends with respect to such shares. The total amount to be paid for the Series C Preferred on all Redemption Dates is hereinafter referred to as the "Series C Redemption Price." The number of shares of Series C Preferred that the corporation shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series C Preferred outstanding immediately prior

to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 4.2(M)(1)(a) shall be redeemed from each holder of Series C Preferred on a pro rata basis.

b. The holders of at least a majority of the then outstanding shares of Series B Preferred may elect (acting as a separate class, either by vote or by contractual approval) to require the corporation, to the extent it may lawfully do so, to redeem the Series B Preferred in three (3) equal annual installments (such election, a "Series B Redemption Election"). The holders of Series B Preferred may make a Series B Redemption Election by providing written notice to the corporation of such election during the sixty (60) day period ending on the Election Date. Subject to the provisions of Section 4.2(M)(1)(c) below, the three redemption installment payments shall be made on the Redemption Dates (each such installment payment, a "Series B Installment"). The corporation shall effect such redemptions on the applicable Redemption Date by paying in cash in exchange for the shares of Series B Preferred to be redeemed a sum equal to the applicable Original Issue Price per share of Series B Preferred plus accrued and unpaid dividends with respect to such shares. The total amount to be paid for the Series B Preferred on all Redemption Dates is hereinafter referred to as the "Series B Redemption Price" and together with the Series C Redemption Price, each a "Redemption Price." The number of shares of Series B Preferred that the corporation shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series B Preferred outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 4.2(M)(1)(b) shall be redeemed from each holder of Series B Preferred on a pro rata basis.

c. At least thirty (30) days but no more than sixty (60) days prior to any Redemption Date, as applicable, the corporation shall send a notice (a "Redemption Notice") to all holders of Series C Preferred and Series B Preferred, as applicable, to be redeemed on such date setting forth (A) the applicable Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price, upon surrender of their share certificates. If, with respect to any Redemption Date, the corporation does not have sufficient funds legally available to redeem all shares of Series C Preferred and Series B Preferred scheduled to be redeemed on such Redemption Date, then the corporation shall so state in the Redemption Notice (with a description of the amount of available funds and the effect of such insufficiency of funds on the redemption as provided in this Section 4.2(M)(1)(c)) and all legally available funds shall be applied first to redeem the Series C Preferred shares scheduled to be redeemed on such Redemption Date, on a pro rata basis as among holders of Series C Preferred shares, and, to the extent legally available funds remain, such remaining legally available funds shall be applied to redeem the Series B Preferred shares scheduled to be redeemed on such Redemption Date, on a pro rata basis as among holders of Series B Preferred shares. The scheduled redemptions which do not occur on the applicable Redemption Date as a result of the corporation having insufficient funds legally available to effect such redemptions

shall be effected as soon as practicable upon the corporation's accumulating legally available funds to make such redemptions. With respect to any Redemption Date, any shares of Series C Preferred scheduled to be redeemed on such Redemption Date that are not redeemed as a result of insufficient legally available funds are referred to herein as "Delayed C Redemption Shares" and any shares of Series B Preferred scheduled to be redeemed on such Redemption Date that are not redeemed as a result of insufficient legally available funds are referred to herein as "Delayed B Redemption Shares." Delayed C Redemption Shares from a particular Redemption Date shall be redeemed in full prior to redemption of Delayed B Redemption Shares from such Redemption Date. Scheduled redemptions for subsequent Redemption Dates (and delayed redemptions for subsequent Redemption Dates) shall not occur until redemption in full of Delayed C Redemption Shares and Delayed B Redemption Shares from prior Redemption Dates.

2. On or prior to the applicable Redemption Date, the corporation shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the corporation pursuant to this Section 4.2(M)(2) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4.2(E) hereof no later than the fifth (5th) day preceding the Redemption Date shall be returned to the corporation forthwith upon such conversion. The balance of any funds deposited by the corporation pursuant to this Section 4.2(M)(2) remaining unclaimed at the expiration of one (1) year following such Redemption Date shall be returned to the corporation promptly upon its written request.

3. On or after such Redemption Date, each holder of shares of Series C Preferred or Series B Preferred to be redeemed shall surrender such holder's certificates representing such shares to the corporation in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the corporation is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series C Preferred or Series B Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Series C Preferred or Series B Preferred are not redeemed due to a default in payment by the corporation or because the corporation does not have sufficient legally available funds, such shares of Series C Preferred or Series B Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

4. In the event of a call for redemption of any shares of Series C Preferred or Series B Preferred, the Conversion Rights (as defined in Section 4.2(E) for such Series C Preferred or Series B Preferred shall terminate as to the shares designated for redemption at the close of business on the fifth (5th) day preceding the Redemption Date, unless default is made in payment of the Redemption Price.

**4.3 No Cumulative Voting.** The shareholders of the corporation shall not be entitled to cumulative voting at any election of directors.

**4.4 No Preemptive Rights.** No shareholder of this corporation shall have, solely by reason of being a shareholder, any preemptive or preferential right or subscription right to any stock of this corporation or to any obligations convertible into stock of this corporation, or to any warrant or option for the purchase thereof, except to the extent provided by resolution or resolutions of the Board of Directors establishing a series of preferred stock or by written agreement with this corporation.

**4.5 Action on Less Than Unanimous Consent of Shareholders.** To the extent permitted by the Act, the taking of action by shareholders without a meeting by less than unanimous written consent of all shareholders entitled to vote on the action shall be permitted. Notice of the taking of such action shall be given to those shareholders entitled to vote on the action who have not consented in writing (and, if the Act would otherwise require that notice of a meeting of shareholders to consider the action be given to nonvoting shareholders, to all nonvoting shareholders), in writing, describing with reasonable clarity the general nature of the action, and accompanied by the same material that, under the Act, would have been required to be sent to nonconsenting (or nonvoting) shareholders in a notice of meeting at which the action would have been submitted for shareholder action. Such notice shall be either (i) by deposit in the U.S. mail before the action becomes effective (or, such longer period as required by law, in the case of a significant business transaction under RCW 23B.19.020(15)), with first-class postage thereon prepaid, correctly addressed to each shareholder entitled thereto at the shareholder's address as it appears on the current record of shareholders of the corporation; or (ii) by personal delivery courier service, wire or wireless equipment, telegraphic or other facsimile transmission, or any other electronic means which transmits a facsimile of such communication correctly addressed to each shareholder entitled thereto at the shareholder's physical address, electronic mail address, or facsimile number, as it appears on the current record of shareholders of the corporation. Notice under clause (i) shall be given at least seventy-two (72) hours, and notice under clause (ii) shall be given at least twenty-four (24) hours before the action becomes effective (or such longer period as required by law, in the case of a significant business transaction under RCW 23B.19.020(15)).

**4.6 Approval by Super Majority Vote.** Unless these Articles of Incorporation provide for a greater voting requirement for any voting group of shareholders, any action which would otherwise require the approval of two-thirds (2/3) of all the votes entitled to be cast, including without limitation the amendment of the Articles of Incorporation, the approval of a plan of merger or share exchange, the sale, lease, exchange or other disposition of all, or



substantially all of the corporation's property otherwise than in the usual and regular course of business, and the dissolution of the corporation, shall be authorized if approved by each voting group entitled to vote thereon by a simple majority of all the votes entitled to be cast by that voting group.

## **ARTICLE V. MANAGEMENT**

**5.1 Management of the Corporation.** The management of the business and the conduct of the affairs of the corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

**5.2 Amendments to Bylaws.** Subject to the Bylaws, the Bylaws may be altered or amended or new Bylaws adopted by the shareholders entitled to vote. The Board of Directors shall also have the power to adopt, amend or repeal Bylaws.

## **ARTICLE VI. LIMITATION ON LIABILITY AND INDEMNIFICATION**

**6.1 Limitation on Director Liability.** No director of the corporation shall be personally liable to the corporation or its shareholders for monetary damages for his or her conduct as a director, which conduct takes place on or after the date this Article VI becomes effective, except for (i) acts or omissions that involve intentional misconduct or a knowing violation of law by the director, (ii) conduct violating RCW 23B.08.310, or (iii) any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled. If, after this Article VI becomes effective, the Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be deemed eliminated or limited to the fullest extent permitted by the Act, as so amended.

**6.2 Indemnification.** The corporation shall indemnify any individual made a party to a proceeding because that individual is or was a director of the corporation and shall advance or reimburse the reasonable expenses incurred by such individual in advance of final disposition of the proceeding, without regard to the limitations in RCW 23B.08.510 through 23B.08.550 of the Act, or any other limitation which may hereafter be enacted to the extent such limitation may be disregarded if authorized by the articles of incorporation, to the full extent and under all circumstances permitted by applicable law. If, after this Article VI becomes effective, the Act is amended to authorize corporate action further extending indemnification of directors, then the indemnification of a director of the corporation shall be deemed extended to the fullest extent permitted by the Act, as so amended.


**6.3 Repeal or Modification.** Any repeal or modification of this Article VI shall be prospective and shall not affect the rights under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

#### **ARTICLE VII. AMENDMENT**

**7.1 Amendments to Articles of Incorporation.** The corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the shareholders herein are granted subject to this reservation.

**7.2 Correction of Clerical Errors.** The corporation shall have authority to correct clerical errors in any documents filed with the Secretary of State of Washington, including these Articles or any amendments hereto, without the necessity of special shareholder approval of such corrections.

IN WITNESS WHEREOF, these Third Amended and Restated Articles have been subscribed this 28 day of January, 2003 by the undersigned who affirms that the statements made herein are true and correct.

  
\_\_\_\_\_  
**Sanjay Kumar**  
**President and Chief Executive Officer**

## **Exhibit C**

Secretary of State  
Division of Business Services  
312 Eighth Avenue North  
6th Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243

ISSUANCE DATE: 06/03/2005  
REQUEST NUMBER: 05154138  
TELEPHONE CONTACT: (615) 741-6488

CHARTER/QUALIFICATION DATE: 05/26/2005  
STATUS: ACTIVE  
CORPORATE EXPIRATION DATE: PERPETUAL  
CONTROL NUMBER: 0494792  
JURISDICTION: WASHINGTON

TO:  
VCUSTOMER CORPORATION  
AT: LUIS MATA  
520 KIRKLAND WAY  
KIRKLAND, WA 98033

REQUESTED BY:  
VCUSTOMER CORPORATION  
AT: LUIS MATA  
520 KIRKLAND WAY  
KIRKLAND, WA 98033

CERTIFICATE OF AUTHORIZATION

I, RILEY C DARNELL, SECRETARY OF STATE OF THE STATE OF TENNESSEE DO HEREBY CERTIFY THAT

"VCUSTOMER CORPORATION",

A CORPORATION FORMED IN THE JURISDICTION SET FORTH ABOVE, IS AUTHORIZED TO  
TRANSACTION BUSINESS IN THIS STATE;  
THAT ALL FEES, TAXES, AND PENALTIES OWED TO THIS STATE WHICH AFFECT THE  
AUTHORIZATION OF THE CORPORATION HAVE BEEN PAID;  
THAT AN APPLICATION FOR CERTIFICATE OF WITHDRAWAL HAS NOT BEEN FILED.

FOR: REQUEST FOR CERTIFICATE

ON DATE: 06/03/05

FROM:  
VCUSTOMER CORPORATION  
520 KIRKLAND WAY  
SUITE 101  
KIRKLAND, WA 98033-0000

RECEIVED: FEES \$20.00 \$0.00  
TOTAL PAYMENT RECEIVED: \$20.00

RECEIPT NUMBER: 00003751227  
ACCOUNT NUMBER: 00495445



*Riley C Darnell*

RILEY C DARNELL  
SECRETARY OF STATE

## **Exhibit D**

**OFFICERS OF VCUSTOMER CORPORATION  
AS ON JUNE 20, 2005**

NAME	TITLE	ADDRESS
Sanjay Kumar	CEO	520 Kirkland Way, Suite 101 Kirkland, WA 98033
Eric Paljug	Vice President	Same
Jose D. David	CFO	Same
Darci Lee	Secretary	Same
Luis Mata	Treasurer	Same

## **Exhibit E**

## Board Of Directors



### **Sanjay Kumar, CEO**

- Founder of vCustomer Corporation
- Former Director with Microsoft



### **Luke Helms, Chairman of Board**

- Former Chairman Seafirst Bank
- Former Vice Chairman Bank of America & KeyBank Corp
- Board member, ABM Industries & Key Bank



### **Barry Taylor, Warburg Pincus**

- Managing Director, Warburg Pincus Silicon Valley Office
- Former Partner Wilson Sonsini Goodrich & Rosati



### **Scott Oki, Oki Developments Inc**

- Chairman - Oki Developments, Oki Foundation
- Former SVP Microsoft
- Founder Microsoft International



### **Patrick Foley**

- Former Chairman and CEO Hyatt, DHL, Braniff
- Board member Flextronics, Health Net, Inc and Glenborough Realty Trust, Inc



### **Erik Anderson**

- President, WestRiver Capital
- Chairman, Tachyon Networks, Inc
- Former CEO, Matthew G Norton, Co and Trillium Corporation



## Leadership Team



### **Sanjay Kumar, CEO**

- Founder of vCustomer Corporation
- Former Director with Microsoft
- Over 15 years of cutting-edge business and technology experience



### **Wesley O'Brien, President & COO**

- Former President and COO Precision Response Corp
- Prior President and CEO Trescom International
- Over 13 Yrs in Senior Management at MCI



### **Aniruddha Ganguly, Senior Vice President - India**

- Former Country Manager, South Asia, Alstom
- Over 23 years of experience in profit center management, operations, business development and technology transfer



### **Jose David, Chief Financial Officer**

- Former CFO, ImageX and Active Voice Corporation
- Over 25 years experience and success as a high technology financial executive



### **Eric Paljug, Vice President - Global Operations**

- Former Director with FreeMarkets and McKinsey & Company
- Over 13 years of experience in corporate strategy, planning and consulting



### **Darci Lee, Vice President - Human Resources**

- Founder & former CEO of DML Technical Resources
- Over 15 years of hands-on human resources management experience



### **Frank Ramirez, Vice President - Marketing & Product Development**

- Former Regional GM, Microsoft/ QUALCOMM JV
- Former Business Product Marketing Director, T-Mobile
- Over 12 years experience in product marketing/ management



### **Chris Massot, Vice President - Sales & Client Services**

- Former Regional Head, Toshiba America Sales
- Over 12 years of senior management experience in CRM, account management and strategic planning

**Exhibit F**

**Filed Under Seal**

## **Exhibit G**



Kara N. Harmala  
Commercial Surety Specialist

June 15, 2005

Vivian Michael-Wilhoite  
Tennessee Regulatory  
460 James Robertson Parkway  
Nashville, TN 37243

RE: vCustomer Corporation  
Telecommunications Relay Service

To Whom It May Concern;

As Surety for vCustomer Corporation, The Hartford Fire Insurance Company will provide a 100% Performance Bond for the above captioned Agreement, provided a contract is awarded to, and executed by vCustomer Corporation.

The Hartford Fire Insurance Company expressly reserves the right to review the terms and conditions of the contract and bond form, evaluate pertinent underwriting data and verify the adequacy of project financing prior to the issuance of the aforementioned bond.

The commitment will expire one hundred twenty (120) days from the date of this letter. Please do not hesitate to contact me if you have any further questions or concerns.

Regards,

  
Kara Harmala

The Hartford Fidelity and Bonding  
520 Pike Tower, Suite 1004  
Seattle, WA 98101-4001

Phone 208-348-0135  
Fax 208-348-0125  
Kara.Harmala@thehartford.com

## **Exhibit H**

**SMALL AND MINORITY-OWNED  
TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN**

Pursuant to T.C.A. § 65-5-212, as amended, vCustomer Corporation (“vCustomer”) submits this Small and Minority-Owned Telecommunications Business Participation Plan (the “Plan”) along with its Application for a Certificate of Public Convenience and Necessity to provide competitive facilities-based and resold local exchange and interexchange telecommunications services throughout the State of Tennessee.

I. **PURPOSE**

The purpose of § 65-5-212 is to provide opportunities for small and minority-owned businesses to provide goods and services to Telecommunications service providers. vCustomer is committed to the goals of § 65-5-212 and to taking steps to support the participation of small and minority-owned businesses in the telecommunications industry. vCustomer will endeavor to provide opportunities for small and minority-owned telecommunications businesses to compete for contracts and subcontracts for goods and services. As part of its procurement process, vCustomer will make efforts to identify and inform minority-owned and small businesses that are qualified and capable of providing goods and services to vCustomer of such opportunities.

vCustomer’s representatives will contact the Department of Economic and Community Development, the administrator of the small and minority-owned telecommunications assistance program, to obtain a list of qualified vendors. Furthermore, vCustomer will seek to increase awareness of such opportunities so that companies not otherwise identified will have sufficient information to participate in the procurement process.

## II. DEFINITIONS

As defined in § 65-5-212:

Minority-Owned Business. Minority-owned business shall mean a business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls daily operations of such business, and who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin and such business has annual gross receipts of less than four million dollars (\$4,000,000).

Small Business. Small Business shall mean a business with annual gross receipt of less than four million dollars (\$4,000,000).

## III. ADMINISTRATION

vCustomer's Plan will be overseen and administered by the individual named below, hereinafter referred to as the Administrator, who will be responsible for carrying out and promoting vCustomer's full efforts to provide equal opportunities for small and minority-owned businesses. The initial Administrator of the Plan will be:

Jose S. David, CFO  
vCustomer Corporation  
520 Kirkland Way  
Kirkland, WA 98033  
Tel: (206) 802-0218  
jose.david@vcustomer.com

The Administrator's responsibilities will include:

- (1) Maintaining an updated Plan in full compliance with § 65-5-212 and the rules and orders of the Tennessee Regulatory Authority.
- (2) Establishing and developing policies and procedures necessary for the successful implementation of the Plan.

- (3) Preparing and submitting such forms as may be required by the Tennessee Regulatory Authority, including the filing of required annual updates.
- (4) Serving as the primary liaison to and cooperating with the Tennessee Regulatory Authority, other agencies of the State of Tennessee, and small and minority-owned businesses to locate and use qualified small and minority-owned businesses as defined in § 65-5-212.
- (5) Searching for and developing opportunities to use small and minority-owned businesses and encouraging such businesses to participate in and bid on contracts and subcontracts.
- (6) Providing records and reports and cooperate in any authorized surveys as required by the Tennessee Regulatory Authority.
- (7) Establishing a record-keeping system to track qualified small and minority-owned businesses and efforts to use such businesses.
- (8) Providing information and educational activities to persons within vCustomer and training such persons to seek out, encourage, and promote the use of small and minority-owned businesses.

In performance of these duties, the Administrator will utilize a number of resources, including:

Chambers of Commerce

The Tennessee Department of Economic and Community Development

The United States Department of Commerce



Small Business Administration

Office of Minority Business

The National Minority Supplier Development Counsel

The National Association of Women Business Owners

The National Association of Minority Contractors

Historically Black Colleges, Universities, and Minority Institutions

The efforts to promote and ensure equal opportunities for small and minority-owned businesses are primarily spelled out in the Administrator's duties above. Additional efforts to provide opportunities to small and minority-owned businesses will include offering, where appropriate and feasible, small and minority-owned businesses assistance with technical, insurance, bonding, licensing, production, and deadline requirements.

#### IV. RECORDS AND COMPLIANCE REPORTS

vCustomer will maintain records of qualified small and minority-owned business and efforts to use the goods and services of such businesses. In addition, vCustomer will maintain records of educational and training activities conducted or attended and of the internal procurement procedures adopted to support this plan.

vCustomer will submit records and reports required by the Tennessee Regulatory Authority concerning the Plan. Furthermore, vCustomer will cooperate fully with any surveys and studies required by the Tennessee Regulatory Authority.

vCustomer Corporation

By:

Name:

Title:

Jose S. David  
JOSE S. DAVID  
CFO

Dated: June 21, 2005

## **Exhibit I**

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**APPLICATION OF  
VCUSTOMER CORPORATION  
FOR A CERTIFICATE TO PROVIDE  
COMPETING LOCAL TELEPHONE  
SERVICES**

**PRE-FILED TESTIMONY OF JOSE S. DAVID**

I, Jose S. David, do hereby testify as follows in support of the application of vCustomer Corporation ("vCustomer" or the "Company") for a Certificate of Public Convenience and Necessity as a competing telecommunications services provider to provide telecommunication services throughout the State of Tennessee.

Q: Please state your full name, business address and position.

Jose S. David, CFO  
vCustomer Corporation  
520 Kirkland Way, Suite 101  
Kirkland, WA 98033

Q: Please briefly describe your duties.

Under the direction of the Company's CEO, I am responsible for adding shareholder value by developing and directing the financial plans and policies of corporate organization. The duties of the CFO include: establishing and maintaining accounting practices and relationships with the financial community, including Wall Street, commercial bankers, auditors, insurance and legal counsel; providing executive direction over controller, accounting operations, SEC reporting, in-house legal counsel and patent defense; overseeing the following worldwide functions: treasury, budget, tax and compliance reporting, investor relations, credit/collections, and financial analysis; and providing executive strategic planning, and financial support to various departments and subsidiaries within the company and in mergers and acquisitions.

Q: Please describe your business experience and educational background.

Experience. Recently, CFO of ImageX, a \$40 million publicly traded online printer (NASDAQ:IMGX) which was recently acquired by Kinkos. Previously CFO and partner of a leading, innovative high technology telecommunications software company, Active Voice Incorporated, which sold its assets to NEC in October 2001. Formerly CFO of \$300 million publicly traded Active Voice

Corporation (NASDAQ:ACVC) in the same business, which was sold to Cisco Systems in February 2001. CPA – State of Washington, 1978 to 1998. Responsibilities reflect career experience, growth and progress through the various business life cycles, including start-up, initial funding, product development and roll out, late round venture capital funding, initial public offering, public company positioning, product overhaul and repositioning and the eventual buyout by a major technology company. Had worldwide multi-functional responsibilities including light product development, establishment and management of manufacturing, mergers and acquisition, patent offense and defense, investor relations, as well as primary financial and administration responsibilities.

Education. University of Washington – BABA Accounting,

Q: Are all statements in vCustomer's application true and correct to the best of your knowledge, information and belief?

Yes.

Q: Please describe the current corporate structure of vCustomer Inc.

vCustomer is a privately held corporation and was incorporated in November, 1999 in the State of Washington.

Q: Does vCustomer possess the requisite managerial, financial, and technical abilities to provide the services for which it has applied for authority?

Yes.

Q: Please describe vCustomer's financial qualification.

Our pro forma, as if, consolidated revenues and EBITDA for the year ended March 31, 2005 were approximately \$172.4 million and \$33.1 million, respectively, as compared with revenues of \$169.9 million and EBITDA of \$21.3 million for the year ended March 31, 2004.

The Company has received a number of financing vehicles to ensure adequate liquidity in meeting its anticipated funding needs. The Company has received a commitment letter from a major lending institution for \$35 million, an existing venture capitalist for \$5 million and from the selling party for \$12.5 million.

Q: Please describe vCustomer Corporation's managerial and technical qualifications.

We provide relay services, directory assistance and operator services, customer relationship management and business process outsourcing ("BPO") services from our facilities in the United States, India and the Philippines, to U.S.

governmental agencies and Fortune 1000 companies looking to outsource these functions to a high quality, competitively priced provider. We have approximately 6,000 employees in nine call centers worldwide. We currently service 19 U.S.-based clients in a variety of industries, including telecommunications, technical help desk, retail and hospitality. We provide operator relay services to the deaf community whereby our operators serve as a deaf person's voice to the outside world via the internet. Additionally, we provide inbound customer management services, which includes handling calls and e-mails from our clients' customers to obtain, directory assistance, general operator assistance, technical support, order goods and services, address billing questions, solicit warranty coverage and web site help desk. We manage over four million customer communications per month, including inbound calls, e-mails and web chats. Our largest clients are U.S. state and federal agencies, MCI, Cisco/Linksys, Netgear, FingerHut and Target.

We believe our competitive strengths will allow us to successfully create a sustainable position as a leading global outsourced services provider.

Q: What services will vCustomer offer?

TeleRelay Services to the Deaf and Hard of Hearing to the State of Tennessee.

Q: Will vCustomer offer services to all consumers within its service area?

TeleRelay Services to the Deaf and Hard of Hearing to the State of Tennessee.

Q: Does vCustomer plan to offer local exchange telecommunications services in areas served by any incumbent local exchange telephone company with fewer than 100,000 total access lines?

No, only TeleRelay Services to the Deaf and Hard of Hearing to the State of Tennessee.

Q: Will the granting of the certificate of convenience and necessity to vCustomer serve the public interest?

Yes.

Q: Does vCustomer intend to comply with all TRA rules, statutes, and orders pertaining to the provision of telecommunications services in Tennessee, including those for disconnection and reconnection services of service?

Yes.

Q: Has any state ever denied vCustomer or one of its affiliate's authorization to provide intrastate service?

No.

Q: Has any state ever revoked the certification of vCustomer or one of its affiliates?

No.

Q: Has vCustomer or one of its affiliates ever been investigated or sanctioned by any regulatory authority for service or billing irregularities?

No.

Q: Who is knowledgeable about vCustomer's operations and will serve as vCustomer's regulatory and customer service contact?

Jose S. David, CFO

Q: Please explain in detail vCustomer's proposed procedure for responding to information requests from the TRA and its staff?

Service to the Deaf and Hard of Hearing will be vCustomer's largest division. The Company's State of Tennessee Contract Administrator will address initial informational requests from the Tennessee Regulatory Authority and its staff. If escalation is necessary, direct contact can be made with vCustomer's Director of TRS, Vice President of TRS, VP of Operations, or President, respectively.

Q: Does this conclude your testimony?

Yes.

I swear that the foregoing testimony is true and correct to the best of my knowledge.

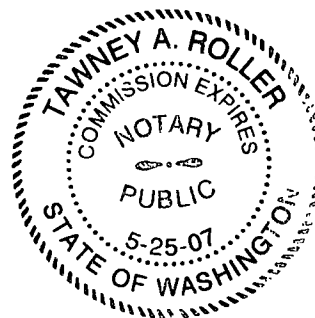
Jose S. David

Jose S. David CFO  
vCustomer Corporation

Subscribed and sworn to me this 21 day of June, 2005

Tawney A. Roller

Notary Public  
State of Washington  
King County



My commission expires 5-25-2007.

## **Exhibit J**



vCustomer Corporation  
ISSUED: June 21, 2005

Tariff No. 1  
Page 1 of 1

EFFECTIVE: June 21, 2005

vCustomer Corporation will not bill any end users. All end user billing will be by MCI or another carrier.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of vCustomer Corporation's Application for a Certificate to Provide Competing Local Telecommunications Services is being forwarded via U.S. mail, postage prepaid, to:

Ardmore Telephone Company, Inc.  
P.O. Box 549  
517 Ardmore Avenue  
Ardmore, TN 38449

BellSouth  
333 Commerce Street  
Nashville, TN 37201-3300

Century Telephone of Adamsville  
P.O. Box 405  
116 North Oak Street  
Adamsville, TN 38310

Century Telephone of Claiborne  
P.O. Box 100  
507 Main Street  
New Tazewell, TN 37825

Century Telephone of Ooltewah-Collegedale, Inc.  
P.O. Box 782  
5616 Main Street  
Ooltewah, TN 37363

Citizens Communications Company of TN  
P.O. Box 770  
300 Bland Street  
Bluefield, WV 24701

Citizen Communications Company of the Volunteer State  
P.O. Box 770  
300 Bland Street  
Bluefield, WV 24701

Loretto Telephone Company, Inc.  
P.O. Box 130  
Loretto, TN 38469

Millington Telephone Company, Inc.  
P.O. Box 429  
4880 Navy Road  
Millington, TN 38083-0429

Sprint-United  
112 Sixth Street  
Bristol, TN 37620

TDS Telecom-Concord Telephone Exchange, Inc.  
P.O. Box 22610  
701 Concord Road  
Knoxville, TN 37933-0610

TDS Telecom-Humphreys County Telephone Company  
P.O. Box 552  
203 Long Street  
New Johnsonville, TN 37134-0552

TDS Telecom-Tellico Telephone Company, Inc.  
P.O. Box 9  
102 Spence Street  
Tellico Plains, TN 37385-0009

TDS Telecom-Tennessee Telephone Company  
P.O. Box 18139  
Knoxville, TN 37928-2139

TEC-Crockett Telephone Company, Inc.  
P.O. Box 7  
Friendship, TN 38034

TEC-People's Telephone Company, Inc.  
P.O. Box 310  
Erin, TN 37061

TEC-West Tennessee Telephone Company, Inc.  
P.O. Box 10  
244 East Main Street  
Bradford, TN 38316

United Telephone Company  
P.O. Box 38  
120 Taylor Street  
Chapel Hill, TN 37034

on this the 24<sup>th</sup> day of JUNE, 2005.

A handwritten signature in cursive script, reading "Jim Murphy", is written over a horizontal line. To the right of the signature is a circled letter "a".